

## § 2102.31

should be mailed to the Staff Secretary within ten working days (excluding Saturdays, Sundays, and legal Federal Holidays) of the date of the requestor's receipt of the final determination.

### § 2102.31 Disclosure of a record to persons other than the individual to whom it pertains.

(a) Except as provided by the Privacy Act, 5 U.S.C. 552a(b), the NSC will not disclose a record concerning an individual to another person or agency without the prior written consent of the individual to whom the record pertains.

### § 2102.41 Fees.

(a) Individuals will not be charged for:

(1) The first copy of any record provided in response to a request for access or amendment;

(2) The search for, or review of, records in NSC files;

(3) Any copies reproduced as a necessary part of making a record or portion thereof available to the individual.

(b) After the first copy has been provided, records will be reproduced at the rate of twenty-five cents per page for all copying of four pages or more.

(c) The Staff Secretary may provide copies of a record at no charge if it is determined to be in the interest of the Government.

(d) The Staff Secretary may require that all fees be paid in full prior to the issuance of the requested copies.

(e) Remittances shall be in the form of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the "United States Treasury" and mailed to the Staff Secretary, National Security Council, Washington, DC 20506.

(f) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

### § 2102.51 Penalties.

Title 18, U.S.C. section 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of \$10,000 or imprisonment for not more than five years or both, to

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knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section (i)(3) of the Privacy Act (5 U.S.C. 552a) makes it a misdemeanor, subject to a maximum fine of \$5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Sections (i)(1) and (2) of 5 U.S.C. 552a provide penalties for violations by agency employees, of the Privacy Act or regulations established thereunder.

### § 2102.61 Exemptions.

Pursuant to subsection (k) of the Privacy Act (5 U.S.C. 552a), the Staff Secretary has determined that certain NSC systems of records may be exempt in part from sections 553(c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of title 5, and from the provisions of these regulations. These systems of records may contain information which is classified pursuant to Executive Order 11652. To the extent that this occurs, records in the following systems would be exempt under the provision of 5 U.S.C. 552a(k)(1):

NSC 1.1—Central Research Index,  
NSC 1.2—NSC Correspondence Files, and  
NSC 1.3—NSC Meetings Registry.

## PART 2103—REGULATIONS TO IMPLEMENT E.O. 12065—INCLUDING PROCEDURES FOR PUBLIC ACCESS TO DOCUMENTS THAT MAY BE DECLASSIFIED

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AUTHORITY: E.O. 12065 and Information Security Oversight Office Directive No. 1.

SOURCE: 44 FR 2384, Jan. 11, 1979, unless otherwise noted.

## Subpart A—Introduction

### § 2103.1 References.

- (a) Executive Order 12065, “National Security Information,” dated June 28, 1978.
- (b) Information Security Oversight Office, Directive No. 1, “National Security Information,” dated October 2, 1978.

### § 2103.2 Purpose.

The purpose of this regulation is to ensure, consistent with the authorities listed in § 2103.1, that national security information processed by the National Security Council Staff is protected from unauthorized disclosure, but only to the extent, and for such period, as is necessary to safeguard the national security.

### § 2103.3 Applicability.

This regulation governs the National Security Council Staff Information Security Program. In consonance with the authorities listed in § 2103.1, it establishes the policy and procedures for the security classification, downgrading, declassification, and safeguarding of information that is owned by, is produced for or by, or is under the control of the National Security Council Staff.

## Subpart B—Original Classification

### § 2103.11 Basic policy.

It is the policy of the National Security Council Staff to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security.

### § 2103.12 Level of original classification.

Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation in section 1-1 of Executive Order 12065 is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

### § 2103.13 Duration of original classification.

Original classification may be extended beyond six years only by officials with Top Secret classification authority. This extension authority shall be used only when these officials determine that the basis for original classification will continue throughout the entire period that the classification will be in effect and only for the following reasons:

- (a) The information is “foreign government information” as defined by the authorities in § 2301.1;
- (b) The information reveals intelligence sources and methods;
- (c) The information pertains to communication security;
- (d) The information reveals vulnerability or capability data, the unauthorized disclosure of which can reasonably be expected to render ineffective a system, installation, or project important to the national security;
- (e) The information concerns plans important to the national security, the unauthorized disclosure of which reasonably can be expected to nullify the effectiveness of the plan;
- (f) The information concerns specific foreign relations matters, the continued protection of which is essential to the national security;

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(g) Disclosure of the information would place a person's life in immediate jeopardy; or

(h) The continued protection of the information is specifically required by statute.

Even when the extension authority is exercised, the period of original classification shall not be greater than twenty years from the date of original classification, except that the original classification of "foreign government information" pursuant to paragraph (a) of this section may be for a period of thirty years.

#### § 2103.14 Challenges to classification.

If holders of classified information believe that the information is improperly or unnecessarily classified, or that original classification has been extended for too long a period, they should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brought to the attention of the chairperson of the NSC Information Security Oversight Committee (see § 2103.51 of this part).

### Subpart C—Derivative Classification

#### § 2103.21 Definition and application.

Derivative classification is the act of assigning a level of classification to information that is determined to be the same in substance as information that is currently classified. Thus, derivative classification may be accomplished by any person cleared for access to that level of information, regardless of whether the person has original classification authority at that level.

### Subpart D—Declassification and Downgrading

#### § 2103.31 Declassification authority.

The Staff Secretary, Staff Counsel, and Director of Freedom of Information of the National Security Council Staff are authorized to declassify NSC documents after consultation with the appropriate NSC Staff members.

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#### § 2103.32 Mandatory review for declassification.

(a) *Receipt.* (1) Requests for mandatory review for declassification under section 3-501 of Executive Order 12065 must be in writing and should be addressed to :

National Security Council, ATTN: Staff Secretary (Mandatory Review Request), Old Executive Office Building, Washington, DC 20506.

(2) The requestor shall be informed of the date of receipt of the request. This date will be the basis for the time limits specified in paragraph (b) of this section.

(3) If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or the request is made more specific, no further action will be taken.

(b) *Review.* (1) The requestor shall be informed of the National Security Council Staff determination within sixty days of receipt of the initial request.

(2) If the determination is to withhold some or all of the material requested, the requestor may appeal the determination. The requestor shall be informed that such an appeal must be made in writing within sixty days of receipt of the denial and should be addressed to the chairperson of the National Security Council Classification Review Committee.

(3) The requestor shall be informed of the appellate determination within thirty days of receipt of the appeal.

(c) *Fees.* (1) Fees for the location and reproduction of information that is the subject of a mandatory review request shall be assessed according to the following schedule:

(i) *Search for records.* \$5.00 per hour when the search is conducted by a clerical employee; \$8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) *Reproduction of documents.* Documents will be reproduced at a rate of \$.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents that are three pages or less, or for the first three pages of longer documents.

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(2) Where it is anticipated that the fees chargeable under this section will amount to more than \$25, and the requestor has not indicated in advance a willingness to pay fees as high as are anticipated, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed \$25, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by the NSC Staff until a reply is received from the requestor.

(3) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasury of the United States and mailed to the Staff Secretary, National Security Council, Washington, DC 20506.

(4) [Reserved]

(5) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(6) If a requestor fails to pay within thirty days for services rendered, further action on any other requests submitted by that requestor shall be suspended.

(7) The Staff Secretary, National Security Council may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of the NSC Staff or of the general public.

### § 2103.33 Downgrading authority.

The Staff Secretary, Staff Counsel, and Director of Freedom of Information of the National Security Council Staff are authorized to downgrade NSC documents, after consultation with the appropriate NSC Staff members.

## Subpart E—Safeguarding

### § 2103.41 Reproduction controls.

The Staff Secretary shall maintain records to show the number and distribution of all Top Secret documents, of all documents covered by special access programs distributed outside the originating agency, and of all Secret and Confidential documents that are marked with special dissemination or reproduction limitations.

## Subpart F—Implementation and Review

### § 2103.51 Information Security Oversight Committee.

The NCS Information Security Oversight Committee shall be chaired by the Staff Counsel of the National Security Council Staff. The Committee shall be responsible for acting on all suggestions and complaints concerning the administration of the National Security Council information security program. The chairperson, who shall represent the NSC Staff on the Inter-agency Information Security Committee shall also be responsible for conducting an active oversight program to ensure effective implementation of Executive Order 12065.

### § 2103.52 Classification Review Committee.

The NSC Classification Review Committee shall be chaired by the Staff Secretary of the National Security Council. The Committee shall decide appeals from denials of declassification requests submitted pursuant to section 3-5 of Executive Order 12065. The Committee shall consist of the chairperson, the NSC Director of Freedom of Information, and the NSC Staff member with primary subject matter responsibility for the material under review.